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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 171227999-9220-02]

RIN 0648-BH48

International Fisheries; Pacific Tuna Fisheries; Procedures for the Active and Inactive Vessel Register

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing regulations under the Tuna Conventions Act of 1950 (TCA), as amended, to implement International Maritime Organization (IMO) requirements in Inter-American Tropical Tuna Commission (IATTC) Resolution C-18-06 (*Resolution (Amended) on a Regional Vessel Register*) and amendments to existing regulations related to the IATTC Regional Vessel Register (Vessel Register) for purse seine vessels fishing in the eastern Pacific Ocean (EPO). The proposed rule would expand the IMO number requirements to include certain categories of smaller U.S. vessels fishing for tuna and tuna-like species in the EPO. The proposed rule would also modify regulations associated with the Vessel Register and prohibition and incidental catch provisions. These revisions would provide more clarity and make U.S. regulations more consistent with the IATTC management framework, while allowing controlled operational flexibility for the U.S. industry.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0030, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0030>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Daniel Studt, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2018-0030” in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-

NMFS-2018-0030, or by contacting the Daniel Studt, NMFS West Coast Region, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802, or emailing *WCR.HMS@noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the NMFS West Coast Region Long Beach Office at the address listed above, by e-mail to *OIRA_Submission@omb.eop.gov*, or by fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Daniel Studt, NMFS, West Coast Region, 562-980-4073.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Antigua Convention, which was negotiated to strengthen and replace the 1949 Convention establishing the IATTC. The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at:
https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf.

The IATTC consists of 21 member nations and five cooperating non-member nations (collectively termed CPCs). The IATTC facilitates scientific research, conservation, and management of tuna and tuna-like species in the IATTC Convention Area (Convention Area), defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, shark, and

billfish stocks in the EPO to determine appropriate catch limits and other measures to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement certain decisions of the IATTC. The TCA (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by Title II of Public Law 114-81, directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, to promulgate such regulations as may be necessary to carry out the United States' international obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The Secretary of Commerce's authority to promulgate such regulations has been delegated to NMFS.

IATTC Resolution on IMO Numbers

An International Maritime Organization (IMO) number is a unique vessel identifier that is permanently associated with the vessel hull, even if the vessel name or ownership changes or if the vessel is reflagged to another nation. For those reasons, there is a wide recognition that IMOs can be useful in helping combat illegal, unreported, and unregulated (IUU) fishing. The IMO, on December 6, 2017, approved amendments to the IMO Ship Identification Number Scheme (IMO Resolution A.1117(30)) expanding fishing vessels' eligibility for IMO numbers. Prior to the amendments, only vessels 100 gross tonnage or above were eligible. The amendment extends eligibility to motorized inboard fishing vessels of less than 100 gross tons GT that are at least 12 meters in length overall and that are authorized to operate outside waters under the national jurisdiction of the flag State.

The IATTC adopted IMO numbering requirements at its 87th meeting in July 2014. Resolution C-14-01 (*Resolution (amended) on a Regional Vessel Register*) required an IMO number or Lloyd's Register number for fishing vessels of at least 100 GT or 100 GRT authorized to fish in the Convention Area. A "Lloyd's Register number," or "LR number," has the same meaning as an IMO number except that an LR number refers to the number issued for a vessel not required to have an IMO number under IMO agreements. The administrator of the IMO ship identification number scheme issues both types of numbers using the same numbering scheme. CPCs are required to provide the IATTC Director IMO numbers for vessels authorized to fish in the Convention Area. NMFS implemented the IMO numbering requirements under Resolution C-14-01 for vessels equal to or greater than 100 GT or 100 GRT in a final rule, effective February 13, 2016 (81 FR 1878).

The IATTC adopted at its 93rd meeting in August 2018 Resolution C-18-06 (*Resolution (amended) on a Regional Vessel Register*), which amended Resolution C-14-01. Resolution C-18-06 expands the IMO number requirement from all fishing vessels of at least 100 GRT or 100 GT to also include all inboard motorized fishing vessels (except for recreational fishing vessels) of 12 meters or greater in overall length (LOA) or registered length, provided that these vessels are authorized to fish for tuna or tuna-like species on the high seas in the Convention Area.

Resolution C-18-06 is available at <http://www.iattc.org/ResolutionsActiveENG.htm>.

Previous IATTC Decisions Regarding Capacity in the Purse Seine Fishery

In June 2002, at its 69th meeting, the IATTC adopted Resolution C-02-03 (*Resolution on the Capacity of the Tuna Fleet Operating in the Eastern Pacific Ocean*) to limit fleet capacity to a level that would ensure sustainable tuna fisheries in the region. Resolution C-02-03 established a total capacity limit of 158,000 cubic meters for all vessels authorized by the IATTC to fish for

tuna species in the EPO. Each CPC was allocated a vessel capacity limit based on historical fishing levels in the EPO.

When Resolution C-02-03 was adopted, the United States was allocated a total of 39,228 cubic meters of capacity in the purse seine fishery. The Resolution also allowed up to 32 U.S. purse seine vessels operating under an alternative international fisheries management regime (e.g., the South Pacific Tuna Treaty) to make a single trip in the EPO, not to exceed 90 days in length without counting towards the U.S. available fleet capacity. Due to removal and additions of vessels from the Vessel Register, the IATTC currently allows the United States up to 31,866 cubic meters of carrying capacity for its EPO purse seine fleet, as well as the additional 32 vessel trips.

The United States promulgated regulations for Vessel Register requirements, including specific regulations for management of the list of active purse seine vessels. NMFS published a final rule in the **Federal Register** (76 FR 283; January 4, 2011) that required that all purse seine vessels, regardless of size, be on the Vessel Register and categorized as “active” in order to be authorized to fish for tuna in the Convention Area. The final rule also exempted small purse seine vessels (*i.e.*, vessel with 362.8 metric tons carrying capacity or less) from frivolous request provisions for active status at 50 CFR 300.22(b)(4)(ii), based on the difficulty of anticipating whether unassociated schools of tuna would come within their range off the U.S. West Coast during a given year. Vessels that do not utilize their active status to a certain extent are considered to have made a frivolous request for that year and become lower in the prioritization of requests for active status for the following year. Following that final rule, further input from stakeholders and further consideration of the U.S.-specific regulations implementing Vessel Register requirements, NMFS sought additional public input on the measures.

Advance Notice of Proposed Rulemaking

NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on March 29, 2018 (83 FR 13466), requesting public comments on the administrative processes to improve the management of capacity limits associated with the Vessel Register. The capacity of U.S. purse seine vessels has approached the U.S. capacity limit in recent years, resulting in the inability to add vessels to the Vessel Register. In addition, requests to be added to the Vessel Register have exceeded the available IATTC-allotted capacity limit for the U.S. Uncertainty and an increase in the cost of fishing in other areas (e.g., the western central Pacific Ocean under the South Pacific Tuna Treaty) has led to an increase in the number of large purse seine vessels (*i.e.*, greater than 362.8 metric tons (mt) carrying capacity) seeking fishing access in the Convention Area. Furthermore, since 2014, there has been increased interest in tuna from small purse seine vessels based on the U.S. West Coast. NMFS anticipates that these trends are likely to continue.

NMFS received comments with suggestions for management measures from three stakeholders representing both small and large U.S. tuna purse seine vessels that fish in the EPO. Stakeholders submitted comments related to the fleet capacity limit, inactive status, small purse seine vessel requirements, vessel replacement process, and more. In developing this proposed rule, NMFS examined these comments for their validity under current IATTC resolutions and evaluated the likelihood of the perceived benefits to the U.S. EPO tuna purse seine fleet. The resulting actions in this proposed rule are described below.

Actions in this Proposed Rule

IMO Numbers

Per Resolution C-18-06, the proposed rule would require that the owner of a fishing vessel of the United States engaging in fishing activities for tuna or tuna-like species in the

Convention Area, and for which a high seas fishing permit under 50 CFR 300.333 is required, shall ensure that an IMO number has been issued for the vessel if the vessel's total internal volume is less than 100 GRT or less than 100 GT but equal to or greater than 12 meters in overall length. Vessel measurements will be based on the vessel's Certificate of Documentation issued under 46 CFR part 67, or State documentation. Currently, IMO numbers are issued on behalf of the IMO by IHS Markit, formerly known as IHS Maritime, at no cost to the vessel (<https://imonumbers.lrfairplay.com/>). The current instructions for requesting an exemption at 50 CFR 300.22(b)(3)(iv) would also apply to the vessels subject to this proposed IMO number requirement.

Purse Seine Well Volume Capacity Correction

The proposed rule would make a technical correction to the vessel capacity limit for the U.S. tuna purse seine fishery operating in the EPO so that the limit would be consistent with the amount authorized by the IATTC. This would add 91 cubic meters to the current U.S. fleet capacity limit of 31,775 cubic meters, and bring the limit to 31,866 cubic meters. These additional 91 cubic meters of capacity resulted from an IATTC revision of our historical capacity calculation.

Inactive Vessels on the Vessel Register

The proposed rule would also update the regulatory text to clarify that vessels listed as inactive or sunk on the Vessel Register count towards the United States' 31,866 cubic meter fleet-wide capacity limit. This is the long-standing practice by the IATTC. Current regulations at 50 CFR 300.22(b)(4) exclude such vessels from the allocation of available capacity, due to an administrative error.

Additionally, the proposed rule would set a time limit of two consecutive calendar years for vessels holding inactive or sunk status, after which a request by such a vessel to be listed on the Vessel Register would be subject to the prioritization hierarchy of request under the current 50 CFR 300.22(b)(4)(i)(C). Therefore, the active status requests for the following year received between August 1 and November 30 would be prioritized in the following order: currently active, currently inactive, first-come first served, and, lastly, those who made a frivolous request or were listed as inactive or sunk for more than two consecutive calendar years. NMFS considers this proposed revision to be consistent with the intent of the existing inactive status provision at 50 CFR 300.22(b)(4)(iii) (*i.e.*, to allow for vessel replacement or repair while not paying a full active vessel assessment fee), while also preventing an indefinite hold on capacity. NMFS believes that two years is a sufficient length of time for a vessel to be repaired or to be replaced, based upon our understanding of the amount of time necessary to find a shipyard for repairs and for repairs to be completed, or the amount of time for a replacement vessel to be purchased and delivered. NMFS welcomes public comment on the appropriate such length of time.

The proposed rule would also allow for a vessel owner or managing owner of a purse seine vessel that has sunk but is listed as active on the Vessel Register to request the vessel be listed as sunk and categorized as inactive on the Vessel Register within 30 days of its sinking. Currently, regulations provide that sunken vessels are immediately removed from the Vessel Register. Under the proposed rule, if a request is not made to list the vessel as sunk within 30 days of its sinking, then the vessel may be removed from the Vessel Register by the NMFS West Coast Regional Administrator.

Frivolous Request Requirements for Small Purse Seiner Vessels

The proposed rule would also treat as frivolous any request by a small coastal purse seine vessel for active status if that vessel did not make at least one landing of tuna caught in the Convention Area in the calendar year prior to the request through November 15 of the year in which the request is made (*i.e.*, a request made in 2019 to fish in 2020 would require one landing of tuna between January 1, 2018, and November 15, 2019). If a small purse seine vessel has not landed tuna caught in the Convention Area within the year before the request was made and through November 15th of the year the request was made, and requests active status on the Vessel Register for the following year (*i.e.*, the third consecutive year of requesting active status), the request would be considered frivolous and subject to the prioritization hierarchy of request under 50 CFR 300.22(b)(4)(i)(C).

While there is difficulty in anticipating whether schools of tuna would come within range of the small purse seine vessels off the U.S. West Coast during a given year, NMFS is proposing changes to regulations in this proposed rule to help ensure the inclusion on the Vessel Register of vessels that are actively fishing and landing tuna. Since 2011, small purse seine vessels that harvested tuna for more than one year landed tuna every 1.75 years on average. Thus, the proposed rule expands on the intent of the existing frivolous request provision, 50 CFR 300.22(b)(4)(ii), by also including small purse seine vessels, while recognizing the variability in harvesting tuna in coastal waters by such vessels. The proposed frivolous request provision for small purse seine vessels would allow considerations of *force majeure* or other extraordinary circumstances that may have prevented a vessel from making a landing during the two year time period. Extraordinary circumstances may include lack of tuna availability or other unique situations as determined by the Regional Administrator.

Frivolous Request for Large Purse Seine Vessels

Based on a comment received on the ANPR, NMFS considered revising the existing frivolous request provision for large purse seine vessels (requiring that large purse seine vessels must catch 20 percent of their tuna in the EPO during the year in which the request was made at 50 CFR 300.22(b)(4)(ii)) in order to allow for an activity requirement based on time spent fishing in the EPO. Such an activity requirement would be in addition to the existing requirement for a 20 percent catch composition, and would be applied in the event a vessel was not able to meet this percentage requirement, and despite reasonably attempting to do so. NMFS declined to further revise the existing frivolous request provision for large purse seine vessels in this manner, as NMFS believes an existing exemption to the frivolous request provision already addresses this type of situation. Specifically, the regulatory text at 50 CFR 300.22(b)(4)(ii)(B)(I) allows the NMFS West Coast Regional Administrator to determine whether *force majeure* or other extraordinary circumstances apply to a particular request for active status.

Aging Fleet Provision

NMFS agrees with a comment received on the ANPR that U.S. purse seine vessels are aging and that there is currently no process to replace them without risk of losing the aging vessel's status on the Vessel Register. Thus, the proposed rule would include a new "aging fleet" provision in 50 CFR 300.22(b) to allow for purse seine vessel owners to replace a purse seine vessel on the Vessel Register with a new or different purse seine vessel, of equal or lesser carrying capacity, without losing the vessel's status on the Vessel Register. The proposed rule would give the vessel owner a period of two years for replacing the existing vessel with a new vessel or a different used vessel.

The replacement process under the aging fleet provision would begin with the vessel owner submitting a request to the NMFS West Coast Regional Administrator to remove their

vessel from the Vessel Register. When a vessel is removed from the Vessel Register, the NMFS West Coast Regional Administrator is currently required to send a notification to the fleet regarding available capacity under 50 CFR 300.22(b)(7)(iii). The proposed rule would include an exception to this notification requirement when a vessel has been removed under the proposed aging fleet provision. Under the proposed aging fleet provision, NMFS would reserve the capacity on the Vessel Register for a period of up to two years and the vessel owner must complete the replacement process within the two-year period in order to resume utilization of the capacity being held by NMFS. Vessel owners would be authorized to use this provision only once for a particular purse seine vessel, to prevent situations where a vessel is passed back and forth between owners who have no intention of using the capacity and whose actions prevent others from utilizing that capacity. The proposed rule also would modify the existing provision on the prioritization of requests to be listed on the Vessel Register so that vessel owners using the proposed aging fleet provision will have first priority to active status, provided that the aging fleet provision replacement process is completed within the two-year period.

Revisions to Regulations on Bycatch

In June 2006, at its 74th meeting, the IATTC revised Resolution C-04-05 (*Consolidated Resolution on Bycatch (Rev 2)*). The resolution addressed reduction of the incidental mortality of juvenile tuna and release of non-target species, and called for various sea turtle protection measures. NMFS implemented Resolution C-04-05 at 50 CFR 300.24 (Prohibitions) and at 50 CFR 300.27 (Incidental Catch and Tuna Retention Requirements). However, NMFS now believes that certain provisions are more restrictive for the U.S. industry than what is required by the resolution, and, therefore, has proposed the revisions discussed below.

NMFS is proposing to revise the regulatory text at 50 CFR 300.24(f) and (g) and 300.27(b) to be more consistent with Resolution C-04-05. For example, in 50 CFR sections 300.24(f) and 300.27(b), the proposed rule would amend the release requirements so that they would no longer apply to tuna-like species. Exempting tuna-like species from the release requirement would allow purse seine vessels to retain tuna-like species, such as the Pacific bonito and black skipjack that were historically targeted, while remaining consistent with the goal of the Resolution to conserve non-target species. The prohibition on landing non-tuna species would be removed from 50 CFR 300.24(g) to allow for the landing of tuna-like species. Purse seine vessels would still be prohibited from landing non-tuna species, as prohibited in the existing language of 50 CFR 300.24(g), other than tuna-like species, because the prohibition on failing to release any non-tuna species would continue to be found in 50 CFR 300.24(g) and 50 CFR 300.27(b). The continued requirement to release fish other than tuna, tuna-like species, and those retained for consumption on board the vessel, is necessary to comply with the Resolution and to promote the conservation of such species. Allowing for the retention and landing of tuna-like species may help offset operational costs, provide flexibility in operations, and allow the utilization of a resource that would have otherwise been discarded.

Advance Notice of Vessel Departure

For purposes of facilitating use of the EPO tuna fleet capacity, the requirement for a 5-day advance notice of vessel departure in order to allow for placement of an observer under § 216.24(b)(8)(iv) would be amended. A supplemental notification would require that a vessel owner or managing owner request placement of a cross-endorsed observer, pursuant to the Memorandum of Cooperation (MOC) between the IATTC and the Western and Central Pacific Fisheries Commission (WCPFC), if the vessel also intends to fish in the WCPFC Convention

Area under 50 CFR part 300, subpart O during the same fishing trip. This MOC facilitates observer placement onboard vessels that fish in the areas of both conventions during the same trip.

Vessel assessment fees, notifications to NMFS, and other housekeeping revisions

The proposed rule would amend existing regulatory text to clarify that vessel owners must coordinate with NMFS to pay the vessel assessment fee directly to the IATTC, and not to NMFS, as currently stated in 50 CFR, sections 300.22(b)(4)(i), 300.22(b)(4)(iii), 216.24(b)(6)(iii) and 216.24(b)(8). As established by the IATTC and implemented in existing regulations, the vessel assessment fee supports the placement of observers on individual tuna purse seine vessels and maintenance of the observer program. Additional changes would be made to the regulatory text, as described below, for clarification purposes at 50 CFR, sections 300.21, 300.22(b)(1), 300.22(b)(4), and 300.22(b)(7).

The proposed rule would amend notification requirements to facilitate requests for active and inactive status on the Vessel Register. A business email address would be required to assist in communications between NMFS and vessel owners. NMFS would not specify which notification method to use in sending requests for active status or requests under the aging fleet provision to the NMFS West Coast Regional Administrator. Written notification requirements not calling for payment of the vessel assessment fee or not relating to permit applications would be directed to the Highly Migratory Species (HMS) Branch of the NMFS West Coast Region to facilitate communication. The HMS Branch definition in 50 CFR 300.21 would be amended to include the branch email address, *wcr.hms@noaa.gov*.

The proposed rule would amend text in 50 CFR 300.22(b)(7) to clarify that the capacity of inactive vessels is counted towards the U.S. capacity limit, for reasons explained above. Text

in 50 CFR 300.22(b)(1) would also be amended to clarify that the vessel capacity of a purse seine vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean and authorized to exercise an option to fish with purse seine gear to target tuna in the Convention Area is not counted towards the U.S. capacity limit. The proposed rule would further clarify that any vessel exercising this single trip exception must follow the procedures, where applicable, as described in 50 CFR 300.22(b)(4).

The proposed rule would also remove the phrase “Eastern Pacific Fisheries” in the subheadings of current sections 50 CFR 300.22 and 50 CFR 300.23, because 50 CFR part 300, subpart C, is specific to eastern Pacific tuna fisheries.

The proposed rule would also reorganize, and make changes to, the existing text at 50 CFR 300.22(b)(4) and 50 CFR 300.22(b)(7) to implement changes to the purse seine Vessel Register listing and procedures for replacing purse seine vessels removed from the Vessel Register, as described above.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) under control number 0648-0387. A request for revision to account for the additional information and updated notification requirements that would be required pursuant to this rule is

under OMB review. Public reporting burden for obtaining an IMO number, for making an IMO exemption request, for making a sunk status request, and for making an aging fleet provision request, are each estimated to average 30 minutes per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for requesting utilization of a cross-endorsed observer is estimated to add two minutes to the vessel departure notification requirement, which is estimated to average 10 minutes per response.

NMFS is seeking public comment regarding: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Comments on these or any other aspects of the collection of information should be sent to the NMFS West Coast Region Long Beach Office at the addresses above, by e-mail to *OIRA_Submission@omb.eop.gov*, or by fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

As described previously in the **SUPPLEMENTARY INFORMATION** section, the proposed regulations would implement IATTC Resolution C-18-06, which would establish IMO number requirements, and amend regulations governing the management of purse seine well capacity and bycatch in the Convention Area.

The SBA defines a “small business” (or “small entity”) as one with annual revenue that meets or is below an established size standard. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411), for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015; 50 CFR 200.2). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. SBA current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA. The new standard results in fewer commercial finfish businesses being considered small.

NMFS prepared analyses for this regulatory action in light of the NMFS size standard for the commercial fishing industry. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. Using the NMFS size standards, NMFS found that the action on purse seine Vessel Register and incidental catch applies to large and small businesses and the action on the IMO number applies to only small businesses.

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) large purse seine vessels with a carrying capacity of more than 362.8 mt, typically based in the western and central Pacific Ocean (WCPO) and also in Ecuador; and (2) small purse seine vessels based on the U.S. West Coast. In addition to the U.S. purse seine fishery, U.S. tuna longline, troll, and bait boat fisheries exist on the high seas in the EPO.

As of March 2019, there are 18 U.S. large purse seine vessels on the Vessel Register, listed as either active or inactive. The number of large purse seine vessels on the Vessel Register has increased substantially in the past five years. This was due in part to uncertainty regarding fishing access pursuant to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (the South Pacific Tuna Treaty). Negotiations for an amended South Pacific Tuna Treaty were concluded in 2016. In 2018, sixteen large purse seine vessels went on 38 fishing trips during which some part of the fishing activity occurred in the EPO. Large purse seine vessels land most of the yellowfin, skipjack, and bigeye tuna catch in the EPO. Ex-vessel price information for large purse seine vessels that fished exclusively in the EPO in 2018 is not available to NMFS, because these vessels did not land on the U.S. West Coast, and the cannery receipts are not available through the IATTC. However, estimates for ex-vessel price information for large purse seine vessels based in the WCPO that fish in both the EPO and WCPO may be used as a proxy for U.S. large purse seine vessels. The number of these U.S. purse seine vessels is approximated by the number with Western and Central Pacific Fisheries Commission (WCPFC) Area Endorsements, which are the NMFS-issued authorizations required to fish commercially for tuna and tuna-like species on the high seas in the WCPFC Convention Area. As of March 2019, the number of purse seine vessels with WCPFC Area Endorsements was 33. Neither gross receipts nor ex-vessel price

information specific to individual fishing vessels fishing in the WCPO and EPO are available to NMFS, so NMFS applied indicative regional cannery prices of the WCPO—as approximations of ex-vessel prices—to annual catches of individual vessels to estimate their annual receipts. Indicative regional cannery prices are available through 2014 (developed by the Pacific Islands Forum Fisheries Agency; available at <https://www.ffa.int/node/425>). NMFS estimated vessels' annual receipts during 2012 through 2014. Using this approach, NMFS estimates that among the affected vessels, the range in annual average receipts per vessel in 2012 through 2014 was \$3 million to \$20 million and the median was about \$13 million.

Based on the limited financial information available about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that about half of the large vessels in the purse seine fleet are small entities as defined by the RFA. These vessels are independently owned and operated, not dominant in their fields of operation, and have annual receipts of no more than \$11 million. Within the purse seine fleet, analysis of average revenue by vessel for the three years of 2014-2016 reveals that average fleet revenue was about \$10.2 million, and the three-year annual averages were less than the \$11 million threshold for 22 vessels in the fleet.

As of March 2019, there are 14 U.S. small purse seine vessels on the Vessel Register. Between 2016 and 2018, there were 10 U.S. small purse seine vessels fishing in the EPO for HMS. The average ex-vessel revenue of HMS since 2016 by those vessels was approximately \$482,000. Based on the financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all of the vessels in the small purse seine fleet are small entities as defined by the RFA. They are independently

owned and operated, not dominant in their fields of operation, and have annual receipts of no more than \$11 million.

The proposed action would require approximately 155 additional vessels fishing for tuna on the high seas in the EPO, including longline, troll, and bait boat vessels, to obtain an IMO number or request an exemption. The average revenue of vessels from the affected fleet landing on the West Coast for the three years of 2015-2017 was approximately \$188,000. Using individual vessels as proxies for individual business, NMFS believes that all of these affected vessels are small entities as defined by the RFA. Complying with the IMO number requirement in this proposed action requires no out-of-pocket expenses because applications are free. The 30 minutes estimated to apply for an IMO number would not result in a significant opportunity cost to the fisherman considering it is a one-time occurrence for the life of the vessel hull. The rule is not expected to change fishery operations. Accordingly, the impact of this rule on the affected vessel owners' and operators' income is not expected to be significant.

The proposed regulation would provide a technical correction to the current regulatory fleet capacity to that which is authorized under the IATTC. The action would increase the available capacity to the U.S. purse seine fleet by 91 cubic meters, from 31,755 cubic meters to 31,866 cubic meters. This would allow for increased fishing capacity and thus, economic benefits.

The proposed amendments providing administrative changes to the regulations to facilitate notification requirements and processes for replacing and adding purse seine vessels to the Vessel Register are not likely to change fishery operations or have any economic impacts. An aging fleet provision would create a process to allow purse seine vessel owners to replace aging vessels currently on the Vessel Register without losing the ability to have the replacement

vessel be placed on the active Vessel Register. This is not likely to change the fishing practices of vessels. The revision could result in an economic benefit to vessel owners by allowing for the replacement of a vessel without the added risk of losing their vessel's active status on the Vessel Register and, with it, their access to fish and income. Because NMFS cannot predict the level of use or fleet activity, the quantitative benefit cannot be estimated.

The proposed rule would also treat as frivolous any request by a small coastal purse seine vessel for active status if that vessels did not make at least one landing of tuna caught in the Convention Area in the calendar year prior to the request through November 15 of the year in which the request is made (*i.e.*, a request made in 2019 to fish in 2020, would require one landing of tuna between January 1, 2018 and November 15, 2019). If a small purse seine vessel has not landed tuna caught in the Convention Area within the year before the request was made and through November 15th of the year the request was made, and requests active status on the Vessel Register for the following year (*i.e.*, the third consecutive year of requesting active status), the request would be considered frivolous and subject to the hierarchy of request under 50 CFR 300.22(b)(4)(i)(C). The almost two-year time frame for making a landing of tuna accounts for flexibility in availability of fish in the variable coastal environment. A frivolous request provision for large purse seine vessels already exists; this amendment would align with the intent of the frivolous request provision while attempting to fairly apply the provision to purse seine vessels of all sizes. Since 2011, the average number of days between tuna-related fishing trips by small purse seine vessels averaged just over one year, and vessels which fished for more than one year fished for tuna approximately every 1.75 years. As of September 2018, approximately 8 vessels have not met the requirement for landings over the past two calendar years. Because these vessels are participating in, and have access to, other fisheries, this action is

not likely to change fleet behavior and is not likely to have a significant economic impact on small purse seine vessels.

The proposed regulations would limit vessels to holding inactive and sunk status for a period of two consecutive years, after which their request for inclusion on the Vessel Register would be considered as a frivolous request in the prioritization of requests. In keeping with the intent of the frivolous request provisions, the action would limit vessels from indefinitely holding capacity from vessels requesting to actively fish in the EPO, while still allowing an appropriate amount of time for inactive and sunk vessels to be repaired or replaced. One vessel has been listed as inactive on the Vessel Register since 2015, occupying 1,523 cubic meters of fishing capacity. Allowing active vessels to replace inactive and sunk vessels that are holding capacity would open capacity for use by vessels requesting to actively fish. This would allow additional vessels to benefit economically through utilization of the capacity, though it is not necessarily known that unutilized capacity would be filled.

The provision in this proposed rule to supplement the vessel departure notification requirement with a statement requesting the use of a cross-endorsed observer, pursuant to an MOC between the IATTC and WCPFC, is not expected to impact fisheries operations. The request would facilitate coordination among the vessels, NMFS, and the IATTC for placement of observers, and may provide an economic benefit by reducing delays in vessel operations.

The provision in this proposed rule to revise current provisions on prohibitions and non-target incidental catch are not likely to substantially change fishery operations nor substantially increase economic impacts. Between 1995 and 2004, the year Resolution C-04-05 was adopted, the average annual landings of Pacific bonito and black skipjack, which are two important non-tuna species, was 138 mt by large purse seiners and 246 mt by small purse seine vessels.

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The entities for which this proposed rule would apply are considered large businesses and small businesses; however, disproportional economic effects are not expected between small and large businesses.

The proposed actions are not expected to substantially change the typical fishing practices of affected vessels, or to significantly affect income of U.S. vessels, and therefore will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required and was not prepared for this proposed rule.

List of Subjects in 50 CFR Parts 216 and 300

Fish, Fisheries, Fishing, Fishing vessels, Reporting and recordkeeping requirements.

Dated: April 9, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 216 and 300 are proposed to be amended as follows:

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF
MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.24, revise paragraphs (b)(4), (b)(6)(iii)(A) through (D), (b)(6)(iii)(F), and (b)(8)(iv)(A) to read as follows:

§ 216.24 Taking and related acts in commercial fishing operations including tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(b) * * *

(4) *Application for vessel permit.* ETP tuna purse seine vessel permit application forms and instructions for their completion are available from NMFS. To apply for an ETP vessel permit, a vessel owner or managing owner must complete, sign, and submit the appropriate form via fax to (562) 980-4047, for prioritization purposes as described under § 300.22(b)(4)(v) of this title, allowing at least 15 days for processing. To request that a vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active on the Vessel Register under § 300.22(b)(4)(ii) of this title in the following calendar year, the owner or managing owner must submit the vessel permit application via fax, payment of the vessel permit application fee, and payment of the vessel assessment fee no later than September 15 for vessels for which a DML is requested for the following year, and no later than November 30 for vessels for which a DML is not requested for the following year.

(6) * * *

(iii) * * *

(A) The owner or managing owner of a purse seine vessel for which a DML has been requested must submit the vessel assessment fee to the IATTC, no later than September 15 of the year prior to the calendar year for which the DML is requested. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a purse seine vessel for which active or inactive status on the Vessel Register, as defined in § 300.21 of this title, has been requested, but for which a DML has not been requested, must submit payment of the vessel assessment fee to the IATTC, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the vessel assessment fee is required only if the vessel is listed as active and is required to carry an observer, or if the vessel is listed as inactive and exceeds 400 st (362.8 mt) in carrying capacity. Payment of the vessel assessment fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean must submit the vessel assessment fee to the IATTC, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90

days or less. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4)(ii) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status, less the vessel assessment fee associated with inactive status that was already paid, before NMFS will request the IATTC Director change the status of the vessel from inactive to active. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer.

(F) Payments will be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(E) of this section for vessels that were listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested; or if received after the dates specified in paragraphs (b)(6)(iii)(A) or (b)(6)(iii)(B) of this section for vessels for which active status is requested if the vessel was listed as active during the year the request was made. Payments will not be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(C) or (b)(6)(iii)(D) of this section, or if received under paragraph (b)(6)(iii)(E) of this section for vessels that were not listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested. Payments will also not be subject to a 10 percent surcharge if received after the date specified in paragraph (b)(6)(iii)(B) of this section for vessels for which inactive status is requested, or for vessels for which active status is requested if the vessel was not listed as active during the year the request was made. Payment of all vessel assessment fees described in this section must be made to the IATTC.

* * * * *

(8) * * *

(iv) * * *

(A) The vessel permit holder of each permitted vessel must notify the Administrator, West Coast Region, or the IATTC contact designated by the Administrator, West Coast Region, at least 5 days in advance of the vessel's departure on a fishing trip to allow for observer placement on every trip. If the vessel permit holder would like to use an IATTC and Western and Central Pacific Fisheries Commission (WCPFC) cross-endorsed observer when fishing in the IATTC Convention Area, the notification must also include a request for the placement of a cross-endorsed observer pursuant to the Memorandum of Cooperation between the IATTC and WCPFC.

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

2. In § 300.21, revise the definitions for “Highly Migratory Species (HMS) Branch” and “Tuna” to read as follows:

§ 300.21 Definitions.

* * * * *

Highly Migratory Species (HMS) Branch means the Chief of the HMS Branch of the Sustainable Fisheries Division, National Marine Fisheries Service West Coast Region, Suite 4200, 501 W. Ocean Blvd., Long Beach, CA 90802, and *wcr.hms@noaa.gov*.

* * * * *

Tuna means any fish of the genus *Thunnus* and the species *Katsuwonus pelamis*.

* * * * *

3. In § 300.22, revise the heading and paragraphs (b)(1), (b)(2), (b)(3)(iii) through (v), (b)(4), (b)(5), (b)(7), and (b)(8), and add paragraph (b)(9) to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) *Exception.* Once per year, a vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean may exercise an option to fish with purse seine gear to target tuna in the Convention Area without the vessel's capacity counted towards the cumulative carrying capacity described under paragraph (b)(4)(i)(A) of this section. This exception is for a single fishing trip that does not exceed 90 days in duration. At any time during the calendar year, a vessel exercising this exception shall follow the procedures, where applicable, described in paragraphs (b)(4) of this section. No more than 32 of such trips are allowed each calendar year. After the commencement of the 32nd such trip, the Regional Administrator shall announce, in the **Federal Register** and by other appropriate means, that no more such trips are allowed for the remainder of the calendar year. Under § 216.24(b)(6)(iii)(C) of this title, vessel assessment fees must be paid for vessels exercising this option.

(2) *Requirements for inclusion of purse seine vessels on the Vessel Register.* The tuna purse seine portion of the Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to June 28, 2002. Inclusion on the

tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(3) * * *

(iii) *Requirements for IMO numbers.* The owner of a fishing vessel of the United States used for commercial fishing for tuna and tuna-like species in the IATTC Convention Area shall ensure that an IMO number has been issued for the vessel if the vessel's Certificate of Documentation issued under 46 CFR part 67 indicates that the vessel's total internal volume is 100 gross register tons or greater or 100 gross tonnage or greater. In addition, the owner of a fishing vessel of the United States engaging in fishing activities for tuna or tuna-like species in the IATTC Convention Area, and for which a high seas fishing permit under §300.333 is required, shall ensure that an IMO number has been issued for the vessel if the vessel's total internal volume is less than 100 gross register tons or less than 100 gross tonnage, but equal to or greater than 12 meters in overall length, as indicated in the vessel's Certificate of Documentation issued under 46 CFR part 67 or State documentation. A vessel owner may request that an IMO number be issued for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the website of IHS Markit, <https://imonumbers.lrfairplay.com/>.

(iv) *Request for exemption.* In the event that a fishing vessel owner, after following the instructions given by the designated manager of the IMO ship identification number scheme, is unable to ensure that an IMO number is issued for the fishing vessel, the fishing vessel owner

may request an exemption from the requirement from the Regional Administrator. The request must be sent by mail to NMFS HMS Branch, West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802, or by email to *wcr.hms@noaa.gov*, and must include the vessel's name, the vessel's official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(v) *Exemption process.* Upon receipt of a request for an exemption under paragraph (b)(3)(iv) of this section, the Regional Administrator will, to the extent he or she determines appropriate, assist the fishing vessel owner in requesting an IMO number. If the Regional Administrator determines that the fishing vessel owner has followed all appropriate procedures and yet is unable to obtain an IMO number for the fishing vessel, he or she will issue an exemption from the requirements of paragraph (b)(3)(iii) of this section for the vessel and its owner and notify the owner of the exemption. The Regional Administrator may limit the duration of the exemption. The Regional Administrator may rescind an exemption at any time. If an exemption is rescinded, the fishing vessel owner must comply with the requirements of paragraph (b)(3)(iii) of this section within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

(4) *Purse seine Vessel Register listing.* For a tuna purse seine vessel to be listed on the Vessel Register and to be categorized as either “active” or “inactive” in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator the required permit applications, written notifications, and fees as described under § 216.24(b) of this

title and under paragraphs (b)(4)(ii) and (b)(4)(iii) of this section as well as payment of the vessel assessment fee, where applicable, to the IATTC.

(i) *Restrictions.* The following restrictions apply:

(A) The cumulative carrying capacity of all tuna purse seine vessels on the Vessel Register may not exceed 31,866 cubic meters in a given year; and

(B) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title.

(ii) *Active status.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator the vessel permit application and payment of the permit application fee and submit to the IATTC payment of the vessel assessment fee.

(A) To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the HMS Branch written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b)(3) of this section, and the owner or managing owner's signature, business email address, and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the IATTC.

(B) The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and payment confirmation of the vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active.

(iii) *Inactive status.* (A) From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the IATTC payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive.

(B) To request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the HMS Branch a written notification including, but not limited to, the vessel name and registration number and the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive.

(C) At any time during the year, a vessel owner or managing owner may request that a tuna purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the remainder of the calendar year, provided the cumulative carrying capacity described in (b)(4)(i)(A) of this section is not exceeded. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the IATTC payment of the associated vessel assessment fee. To request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the HMS Branch written notification as described in (b)(4)(iii)(A). Payment of the vessel assessment fee is not required for such vessels.

(D) The vessel owner or managing owner of a purse seine vessel listed as active on the Vessel Register that has sunk may request the vessel be listed as sunk and categorized as inactive on the Vessel Register. To request the vessel be listed as sunk and categorized as inactive on the Vessel Register, the vessel owner or managing owner must submit to the HMS Branch written notification within 30 days of the vessel's sinking. Written notification shall include, but is not limited to, the vessel name, date of sinking, registration number, the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers. For subsequent calendar years, vessel assessment fee payment shall be made as described in paragraph (b)(4)(iii) of this section.

(E) A vessel listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after [*effective date of final rule publication*] requesting active status will be prioritized according to the hierarchy under paragraph (b)(4)(v) of this section. A vessel

listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after *[effective date of final rule publication]* will be removed from the Vessel Register as described in paragraph (b)(5)(ix) of this section.

(iv) *Frivolous requests.* (A) Except as described under paragraph (b)(4)(iv)(B) of this section, requests for active status under paragraph (b)(4)(ii) of this section will be considered frivolous if, for a vessel categorized as active on the Vessel Register in a given calendar year:

(1) Less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(2) The vessel did not fish for tuna at all in the Convention Area in that same year.

(B) Exceptions. Requests described under paragraph (b)(4)(iv)(A) of this section will not be considered frivolous requests if:

(1) The vessel's catch pattern fell within the criteria described in paragraph (b)(4)(iv)(A) of this section as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator; or

(2) The vessel's carrying capacity is 400 st (362.8 mt) or less and there was at least one documented landing of tuna caught by the vessel in the Convention Area in the calendar year prior to the year in which the request is made and through November 15 of the year of the request, unless the vessel was not able to make a landing as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator.

(3) The vessel was listed as inactive before *[insert effective date of final rule publication]* and has not been listed as inactive for more than two consecutive calendar years since *[insert effective date of final rule publication]*.

(v) *Listing hierarchy*. Requests for active status and inactive status will be prioritized according to the following hierarchy:

(A) Requests received for replacement vessels of those removed from the Vessel Register under the request described in (b)(9) of this section;

(B) Requests received for vessels that were categorized as active in the previous year, unless the request was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(C) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year, unless that vessel has been listed as inactive or sunk under paragraph (b)(4)(iii) for more than two consecutive calendar years after [*effective date of final rule publication*];

(D) Requests for vessels not described in paragraphs (b)(4)(v)(A) through (C) of this section will be prioritized on a first-come, first-served basis according to the date and time of receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(E) Requests received from owners or managing owners of vessels that were determined by the Regional Administrator to have made a frivolous request for active status under paragraph (b)(4)(iv) of this section or that have been listed as inactive or sunk as described in paragraph (b)(4)(iii) of this section for more than two consecutive calendar years after [*effective date of final rule publication*].

(5) *Removal from the Vessel Register*. A vessel may be removed from the Vessel Register by the Regional Administrator:

- (i) If the vessel has sunk, and the vessel owner or managing owner has not submitted written notification as described in paragraph (b)(4)(iii)(C) of this section;
- (ii) Upon written request by the vessel's owner or managing owner;
- (iii) Following a final agency action on a permit sanction for a violation; and
- (iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation.
- (v) If the U.S. Maritime Administration or the U.S. Coast Guard notifies NMFS that:
 - (A) The owner has submitted an application for transfer of the vessel to foreign registry and flag; or
 - (B) The documentation for the vessel will be or has been deleted for any reason.
- (vi) If the vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation;
- (vii) For tuna purse seine vessels, upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (b)(8) of this section; or
- (viii) For tuna purse seine vessels, if the request for active status on the Vessel Register has been determined to be a frivolous request; or
- (ix) If the vessel has been listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after *[effective date of final rule publication]*.

(6) * * *

(7) *Procedures for replacing purse seine vessels removed from the Vessel Register.* (i) A purse seine vessel that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time

during the year, provided the cumulative carrying capacity described in (b)(4)(i)(A) of this section is not exceeded. The owner or managing owner of a purse seine vessel of more than 400 st (362.8 mt) carrying capacity must pay the vessel assessment fee associated with inactive status. The owner or managing owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less must submit written notification as described in paragraph (b)(4)(iii) of this section.

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel or vessels removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity described in (b)(4)(i)(A) of this section is not exceeded and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

(iii) *Notification of available capacity.* (A) After a purse seine vessel categorized as active or inactive is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active or inactive list of the Vessel Register.

(B) Exception. When a purse seine vessel categorized as active or inactive on the Vessel Register has been removed from the Vessel Register under the procedures described in (b)(9) of this section, the Regional Administrator will not make available the capacity of the vessel removed from the Vessel Register, and will reserve that capacity for a replacement vessel for a period of two years. The replacement vessel will be eligible to be listed as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel being replaced.

(iv) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel or vessels removed from

the Vessel Register by submitting to the HMS Branch written notification as described in paragraph (b)(4)(ii) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee to the IATTC within 10 business days after submission of the written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(v) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator the vessel permit application as described under § 216.24(b) of this title and payment of the vessel assessment fee to the IATTC and payment of the permit application fee to the Regional Administrator within 10 business days after submission of the vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced, and the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(8) The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator prior to submitting an application for transfer of the vessel to foreign registry and flag. Written notification must be submitted to the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph.

(9) *Aging fleet provision.* (i) The vessel owner or managing owner of a purse seine vessel listed as active or inactive on the Vessel Register may request to replace the current vessel with a new or used vessel without losing the vessel's placement in the hierarchy of requests for active status as described in paragraph (b)(4)(v) of this section. The replacement vessel will be eligible to be listed as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel being replaced. This provision may be used only once per vessel by the vessel owner or managing owner.

(ii) A request made under this provision may include a request to remove the vessel from the Vessel Register. The Regional Administrator will ensure the capacity for the replacement vessel is available for up to 2 years from the date of notification described in paragraph (b)(9)(iv) of this section.

(iii) To request a vessel be replaced under this provision, the vessel owner or managing owner must submit to the HMS Branch written notification including, but not limited to, the vessel name and registration number, the vessel owner or managing owner's name, signature,

business address, business email address, and business telephone and fax numbers, and the expected month and year the replacement vessel will be ready to fish in the Convention Area.

(iv) Within 30 days of receiving each request described in (b)(9)(i) of this section, the Regional Administrator shall notify the vessel owner or managing owner in writing whether the request has been accepted or denied, and the reasons therefore.

4. In § 300.23, revise the section heading to read as follows:

§ 300.23 Persons and vessels exempted.

5. In § 300.24, revise paragraph (f) and remove and reserve paragraph (g) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(f) When using purse seine gear to fish for tuna in the Convention Area, fail to release any fish species (excluding mobulid rays, tuna, tuna-like species, and those being retained for consumption aboard the vessel) as soon as practicable after being identified on board the vessel during the brailing operation as required in §300.27(b).

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6. In § 300.27, revise paragraph (b) to read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

* * * * *

(b) *Release requirements for fish species on purse seine vessels.* All purse seine vessels must release, as soon as practicable after being identified on board the vessel during the brailing operation, all billfish, rays (not including mobulid rays, which are subject to paragraph (i) of this

section), dorado (*Coryphaena hippurus*), and other fish species except tuna, tuna-like species and those being retained for consumption aboard the vessel. Sharks caught in the IATTC Convention Area and that are not retained for consumption aboard the vessel must be released according to the requirements in paragraph (k) of this section. Tuna caught in the IATTC Convention Area are subject to the retention requirements in paragraph (a) of this section.

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